

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

AERITAS, LLC,

Plaintiff,

v.

CHICK-FIL-A, INC.,

Defendant.

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CIVIL ACTION NO. 6:19-CV-52-JDK

ORDER GOVERNING PROCEEDINGS

Pursuant to Federal Rules of Civil Procedure 16(b) & 26, the Court enters this Order to promote possible early settlement of this action and to facilitate entry of a Scheduling Order.¹

I.

Pursuant to Rule 26(f), lead counsel for each party (or a designee attorney with appropriate authority) shall confer (the “Scheduling Conference”) as soon as practicable, but in any event no later than **May 31, 2019**, and (1) consider the nature and basis for their claims and defenses; (2) discuss the possibilities for a prompt resolution of the case; (3) make or arrange for the disclosures required by Rule 26(a)(1) and the authorizations described in Local Rule CV-34; and (4) prepare the report described below. The Court believes that a personal face-to-face meeting is usually the most productive type of conference, but the Court leaves the form of the Scheduling Conference to the professionalism of the parties. Based on the Scheduling Conference, the parties shall prepare and submit a Report Regarding Contents of Scheduling Order (“Joint Report”). The Joint Report shall also include a status report on settlement negotiations but shall not disclose settlement figures.

¹ Before the case management conference, counsel and unrepresented parties should review the most recent versions of the Federal Rules of Civil Procedure and the Local Rules for the Eastern District of Texas. The Local Rules are available on the Eastern District of Texas website (www.txed.uscourts.gov).

II.

The Joint Report, which shall be filed on or before **June 14, 2019**, shall include the following in separate numbered paragraphs (but NOT in a proposed Order format):

- (1) A brief statement of the claims and defenses;
- (2) The jurisdictional basis for the suit;
- (3) A proposed deadline for motions for leave to join other parties;
- (4) A proposed deadline for motions to amend the pleadings;
- (5) Proposed deadlines for various other types of motions, including dispositive motions (NOTE: The dispositive motion deadline cannot be less than 90 days before trial; the Court prefers 120 days);
- (6) A proposed deadline for initial designation of experts;
- (7) A proposed deadline for responsive designation of experts;
- (8) A proposed deadline for objections to experts (i.e., *Daubert* and similar motions);
- (9) A proposed plan and schedule for discovery, a statement of the subjects on which discovery may be needed, a time limit to complete factual discovery and expert discovery, and a statement of whether discovery should be conducted in phases or limited to or focused upon particular issues;
- (10) Any proposed changes to the discovery limitations imposed by the Federal Rules of Civil Procedure, the Local Rules, and any other discovery limitations;
- (11) Proposed means for disclosure or discovery of electronically stored information (“ESI”) and a statement of any disputes regarding the disclosure or discovery of ESI;
- (12) Any proposals regarding the handling and protection of privileged or trial-preparation material that should be reflected in a Court Order.
- (13) A proposed trial date, estimated number of days required for trial, and whether a jury has been demanded;
- (14) A proposed date for further settlement negotiations;
- (15) Objections to Fed. R. Civ. P. 26(a)(1) asserted at the Scheduling Conference, and other proposed modifications to the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;

- (16) Whether the parties are considering mediation or arbitration to resolve this litigation and a statement of when it would be most effective (e.g., before discovery, after limited discovery, after motions are filed, etc.);
- (17) Any other proposals regarding scheduling and discovery that the parties believe will facilitate expeditious and orderly preparation for trial;
- (18) Whether a conference with the Court is desired; and
- (19) Any other matters relevant to the status and disposition of this case, including any other Orders the parties propose the Court should enter under Rules 16(b) and (c) and 26(c).

The filing of the Joint Report is mandatory. When submitting proposed dates to the Court, the parties should assume that the Court will enter the Scheduling Order within approximately one month from the date of the parties' Joint Report. All parties shall endeavor to prepare joint suggestions, but if they cannot agree, the Joint Report shall reflect their respective views. In such a case, the Joint Report shall set forth each party's respective recommendation and a statement of why the parties disagree. The Joint Report shall also provide the names of any parties named in the case who did not participate in the conference.

III.

Lead counsel for Plaintiff is responsible for initiating contact with opposing counsel to arrange the Scheduling Conference and prepare the Joint Report. Lead counsel for all parties are equally responsible for complying with this Order in a timely manner. At least one counsel for each party shall sign the Joint Report prior to filing.

IV.

Under Rule 16(b)(2), the Court is to enter a Scheduling Order "as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has

appeared,” and therefore any request for an extension of time to file the Joint Report shall be denied, absent a showing of good cause.

V.

The Rule 16 Pretrial Conference is set for **June 25, 2019** at **10:00 AM** at the William M. Steger Federal Building and United States Courthouse, 221 West Ferguson Street, Courtroom 102, Tyler, TX 75702. Lead counsel for each party, or alternatively, counsel with authority to bind their respective clients, shall be present. The parties are directed to confer and be prepared to discuss the contents of the Joint Report. The Court will issue a Scheduling Order following the Rule 16 Pretrial Conference. The Court may cancel the Rule 16 Pretrial Conference depending on the needs of the case and the information contained in the Joint Report.

VI.

Unless this is an action exempted by Rule 26(a)(1)(E) or objection to disclosure is asserted at the Scheduling Conference, in good faith, as provided in Rule 26(a)(1)(C), the parties must make the disclosures described in Rule 26(a)(1) within fourteen days of the date set out in Paragraph I hereof.

VII.

Safeguarding Personal Information:

The Judicial Conference of the United States has implemented policies to protect sensitive private information about parties, witnesses, and others involved in a civil, criminal, or bankruptcy case. To that end, all documents filed with the Court and made available to the public, whether electronically or on paper, should limit certain information as follows:

- for Social Security numbers, use only the last four digits;
- for financial account numbers, use only the last four digits;


- for names of minor children, use only their initials;
- for dates of birth, use only the year; and
- (in criminal cases) for home addresses, use only the city and state.

If such information is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is for you to avoid introducing this information into the record in the first place. Please take this into account when questioning witnesses or making other statements in court.

Settlement:

Plaintiff's counsel shall immediately notify the Court upon settlement.

So **ORDERED** and **SIGNED** this **17th** day of **May, 2019**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE